

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SPACE DATA CORP.,

Plaintiff,

v.

GOOGLE LLC, and others,

Defendants.

Case No. 16-cv-03260 BLF (NC)

ORDER RE: THRUN DEPOSITION

Re: Dkt. No. 269

Plaintiff seeks to depose former Google employee Sebastian Thrun concerning his knowledge of Google's Project Loon. ECF 269. Thrun objects and seeks a protective order, asserting the so-called "apex doctrine." The apex doctrine is an application of Federal Rule of Civil Procedure 26(c)(1), which permits the court to protect a party or person from "annoyance, embarrassment, oppression, or undue burden." Persons at the top of their organization may be particularly annoyed or oppressed by having to be deposed. The burden may seem particularly unfair where, as here, the witness no longer is employed by any party to the dispute. From the witness perspective, there is a high burden and no benefit.

On the other hand, if being super-busy and important immunized you from being deposed, there might not be any depositions in Silicon Valley. The apex doctrine is not as

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1 Thrun might wish a kryptonite that will keep the lawyers forever at bay.

2 At bottom, I am not persuaded that the Thrun deposition is proportional to the needs
3 of the case at this moment, weighing the burden to Thrun against the anticipated benefit to
4 Space Data.¹ Space Data should first take the depositions of the relevant Google
5 employees with knowledge of Project Loon. If, after having substantially completed
6 the Google depositions, Space Data can show that it still has information gaps that it needs
7 Thrun's testimony to fill, then it may renew its request to depose Thrun. Barring further
8 court order, the Space Data portion of the Thrun deposition will be capped at 90 minutes.

9 This order will be filed publicly without redactions. The Court will rule separately
10 on the motion to file portions of the discovery brief under seal.

11 **IT IS SO ORDERED.**

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13 Dated: June 29, 2018

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16 NATHANAEL M. COUSINS
17 United States Magistrate Judge
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28 ¹ The Court GRANTS leave to file and has considered the Thrun declaration attached to the discovery brief. The declaration attests to his lack of recall about Project Loon.